

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of:)	
)	
Request for Review of the Decision of the)	
Universal Service Administrator by)	
)	
Western Heights School District I-41)	FCC Form 471 No. 423176
Oklahoma City, Oklahoma)	Funding Request Number 1167623
)	
Schools and Libraries Universal)	CC Docket No. 02-6
Support Mechanism)	
)	
)	

To: Wireline Competition Bureau

REQUEST FOR REVIEW

Western Heights School District I-41, ("WHSD" or "School District"), by its representatives, hereby seeks review of the determination of the Schools and Library Division of the Universal Service Administrative Company ("SLD"), dated July 29, 2005, denying an appeal submitted by WHSD regarding a funding denial for Funding Request Number 1167623.

I. FACTS

On July 29, 2005, the SLD issued a Decision on Appeal in connection with the above-referenced matter. (Attachment A). The SLD decided not to approve universal service support for the School District to purchase an e-mail storage device. In its decision, the SLD agreed that the School District's funding request was for an eligible service:

Your funding request for the purchase of a Magnitude 3D storage system to provide email storage for the District's Microsoft Exchange Email server is a request for eligible services.

However, the SLD also reasoned that the e-mail storage device itself was not eligible for E-rate support:

However, the product that you requested to perform this service, Xiotech's Magnitude 3D Storage System is not eligible for funding.

II. BACKGROUND

The Commission's rules and regulations governing the availability of universal service funding emphasize service or product eligibility in the context of why, where, how and for whom it is used¹. No distinction is made in the Commission's rules as to particular makes or models of equipment being deemed eligible or ineligible. The consistent message of the FCC has been that it is the framework of utilization for a service or product that determines its eligibility.

III. DISCUSSION

In its July 29, 2005, Decision on Appeal, the SLD appears to have added a new requirement by which eligibility for support is evaluated. In this case, the SLD agrees that the District intends to use its internal connections equipment in an eligible context (i.e. e-mail storage, located on school property, serving students and faculty, meets the traditional "why, where, how and for whom" criteria.) However, in stating its reason for denying the appeal, the SLD has applied an additional condition. Although the product is providing a service that the SLD agrees is eligible, the SLD states that the product itself is not qualified to receive universal service support. In essence, the SLD has communicated that there is now "what" criterion: regardless of why, where, how and for whom a product is used, depending upon **what** the product it is, it may not be eligible for support. The notion of irrevocably ineligible devices, regardless of the context in which they are used, is inconsistent with the Commission's rules and policies.

IV. RELIEF SOUGHT

WHSD requests that the Commission reverse the SLD's funding decision with respect to the e-mail storage device and instruct the SLD to fund fully Funding Request Number 1167623.

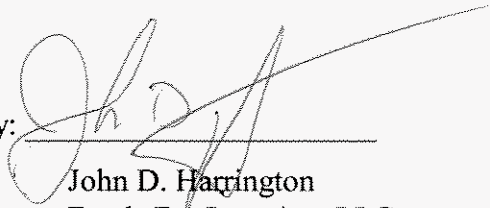
¹ See §45.500(b), "Educational Purposes"; See also §45.506(a), "Internal Connections"

If the Commission supports the SLD's "what" criterion and does not reverse this funding decision, then the School District requests a list of products and services that are deemed ineligible regardless of use so that future WHSD funding requests may avoid such ineligible products and services.

Respectfully submitted,

WESTERN HEIGHTS SCHOOL DISTRICT I-41

By:

A handwritten signature in black ink, appearing to read "John D. Harrington", written over a horizontal line.

John D. Harrington
Funds For Learning, LLC
501 S. Coltrane Rd
Edmond, OK 73034
405-341-4140

cc: Joe Kitchens
Superintendent
Western Heights School District I-41
8401 S.W. 44th St.
Oklahoma City, OK 73179

ATTACHMENT A



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2004-2005

July 29, 2005

Joe Kitchens
Western Heights School District I-41
8401 South West 44th Street
Oklahoma City, OK 73179

Re: Applicant Name: WESTERN HEIGHTS SCHOOL DIST 41
Billed Entity Number: 139844
Form 471 Application Number: 423176
Funding Request Number(s): 1167623
Your Correspondence Dated: March 23, 2005

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2004 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1167623
Decision on Appeal: **Denied**
Explanation:

- On appeal, you are seeking the reversal of the SLD's decision to deny the funding request on the basis that 30% or more of this FRN includes a request for Magnitude 3D Email Storage, which is an ineligible product. You maintain that per the FY 2004 Eligible Services List, the data storage products in an eligible file server are eligible for funding. Since the storage equipment is being used to store eligible email files for students and faculty, you are requesting reconsideration on the funding of this FRN.
- Your funding request for the purchase of a Magnitude 3D storage system to provide email storage for the District's Microsoft Exchange Email server is a request for eligible services. The FY 2004 Eligible Services List reference that you cite in your appeal letter does validate that data storage products in an eligible

file server used to store information such as email software and email files is eligible for funding. However, the product that you have requested to perform this service, Xiotech's Magnitude 3D Storage System, is not eligible for funding.

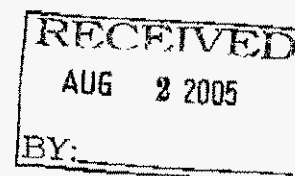
- Your Form 471 application included costs for the following ineligible products: Magnitude 3D Storage System. FCC rules provide that discounts may be approved only for eligible products. 47 C.F.R. §§ 54.502, 54.503. The USAC web site contains a list of eligible products. See the web site, www.sl.universalservice.org, Eligible Services List. FCC rules require that if 30% or more of an applicant's funding request includes ineligible products, the funding request must be denied. 47 C.F.R. § 54.504(c)(1). 81% of your funding request was for ineligible products. Therefore, your funding request was denied. You did not demonstrate in your appeal that your request included less than 30% for ineligible products. Consequently, SLD denies your appeal.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the FCC. For appeals that have been denied in full, partially approved, dismissed, or cancelled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Billed Entity Number: 139844
Form 471 Application Number: 423176
Form 486 Application Number:



Joe Kitchens
Western Heights School District I-41
8401 South West 44th Street
Oklahoma City, OK 73179

WESTERN HEIGHTS ADMINISTRATION

WESTERN HEIGHTS SCHOOL DISTRICT I-41

8401 S.W. 44th
Oklahoma City, OK 73179

Phone (405) 350-3410
Fax (405) 745-6922

March 23, 2005

Letter of Appeal
Schools and Libraries Division
Box 125-Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

RE: Appeal of Denial of Funding Year 2004 FRN 1167623

Applicant:	Western Heights School District I-41
Billed Entity Number:	139844
Form 471 Application No.:	423176
Funding Year:	2004
Funding Request Number:	1167623

To Whom It May Concern:

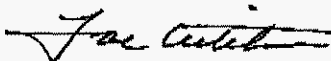
On January 24, 2005, the Universal Service Administrative Company transmitted a Funding Commitment Decision Letter that denied the requested funding for Funding Request Number 1167623. We believe that this decision was incorrect because the requested equipment is for e-mail storage for the District's entire student and faculty population. (The requested e-mail storage equipment will provide approximately 500MB of e-mail storage per user.)

The FY2004 Eligible Services list has the following to say concerning this type of storage product:

Data storage products in an eligible file server would be eligible when used to store the following information: - Network operating system files and functions, when the associated file server is used for an eligible purpose - Software that facilitates Internet connectivity, e.g., Domain Name Service (DNS) software - Dynamic Host Configuration Protocol (DHCP) software - Web server software and files, except as excluded below - *E-mail software - E-mail files* [emphasis added]

Because this e-mail storage equipment is being used to store eligible e-mail files for students and faculty, it is requested that the SLD approve this appeal request and a issue funding commitment for the full amount of the original funding request.

Respectfully,



Joe Kitchens
Superintendent